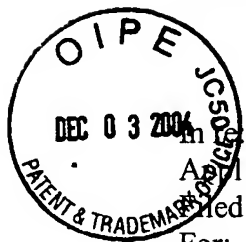


## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Inventor: Abad *et al.*  
Applicant No.: 10/606,320  
Filed: June 25, 2003  
For: GENES ENCODING PROTEINS WITH PESTICIDAL ACTIVITY

Confirmation No.: 8411  
Group Art Unit: 1638  
Examiner: Maria Teresa D. Samson

December 3, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO RESTRICTION REQUIREMENT**

This is in response to the Office Action dated November 5, 2004, in which the Examiner has required restriction between Group I, namely Claims 1-9, Group II, namely Claims 10-19, Group III, namely Claims 20-30, Group IV, namely Claims 31-33 and 41-53, Group V, namely Claims 34-40, and Group VI, namely claims 54-56. Applicants hereby provisionally elect with traverse to prosecute the claims of Group I (Claims 1-9) and expressly reserve the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the unelected claims. Applicants are also submitting herewith a preliminary amendment in order to clarify the scope of the claims and the nature of the invention. Particularly, Applicants believe that they are entitled to examination of the pending claims as originally submitted, including pending claim 1. This claim is drawn to an endotoxin comprising at least one engineered cathepsin-sensitive site, wherein said endotoxin has improved pesticidal activity. Applicants believe that the breadth of this claim reflects in part the contribution made by Applicants in describing their invention to the public. Support for the breadth of the claims is provided throughout the specification and in the working examples, as discussed in more detail in the Preliminary Amendment submitted herewith. Accordingly, and in view of the amendments made in the preliminary amendment, Applicants believe that an election of species is not appropriate, as indicated in the Office Action (page 6, first sentence).

Applicants also note that, if the claims are restricted as indicated in the Office Action dated November 5, 2004, the group of claims identified as Group II is inconsistent with the rest of the restriction scheme because under this scheme, this group comprises two distinct types of claims. As described in the Office Action, claims 10-13 are drawn to a method of enhancing pesticidal activity of an endotoxin comprising adding at least one engineered cathepsin-sensitive proteolytic site. However, claims 14-19 are drawn to a method of increasing the pesticidal activity of a pesticidal polypeptide comprising altering at least one proteolytic site in said pesticidal polypeptide, whereby

Appl No.: 10/606,320  
Amdt. dated 12/03/2004  
Reply to Restriction Requirement of November 5, 2004

the stability of said pesticidal polypeptide in an insect gut is increased. Accordingly, under the scheme as set forth in the Office Action, claims 14-19 should have been placed in a separate group from the other claims in Group II.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

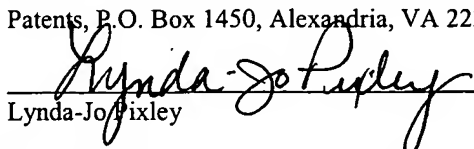


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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

  
Lynda-Jo Pixley

RTA 2170078v1